

By giving away tangible personal property, a donor makes a taxable use of the property and is subject to Use Tax on the cost price of the property purchased to be given away. See 86 Ill. Adm. Code 130.305 (This is a GIL).

January 30, 2001

Dear Xxxxx:

This is in response to your letter dated November 14, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter you have stated and made inquiry as follows:

We request your official position concerning the use tax base for articles that are distributed as free samples. Our question specifically concerns samples of manufactured products given away by the manufacturer either itself or through others. Neither the manufacturer nor the person through whom the items are distributed received any consideration for the items. This question does not include items that are 'free with purchase' or advertising materials.

Do you include in the use tax base the cost of materials only or the cost of materials plus labor and overhead, or is the use tax base the retail sales price?

We appreciate your timely response.

In general, the purchase of tangible personal property at retail for use or consumption in this State is subject to Illinois Use Tax. See 35 ILCS 105/2 and 3. If the retailer does not collect the Use Tax from the purchaser for remittance to the Department, the purchaser is responsible for remitting the Use Tax directly to the Department. See 86 Ill. Adm. Code Section 150.130, enclosed for your reference. When property is purchased and then given away, the donor has made a taxable use of the property by making such gift. Therefore, it is the donor of the gift who is deemed the end user of the property and who is subject to the Use Tax, rather than the donee. See 86 Ill. Adm. Code Section 150.305(c), enclosed.

The donor's Use Tax liability is calculated on the cost price of the property given away. When the property is purchased at retail, the base for calculating Use Tax is the purchase price of the property. If, however, the property given away is a finished product produced by the donor, the donor's Use Tax liability is calculated on the donor's cost price of the materials and products purchased and incorporated into the finished product. See 86 Ill. Adm. Code Section 150.305(b) and (c).

I hope this information has been helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Sincerely,

Dana Deen Kinion
Associate Counsel

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